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10 CHILDREN'S HOSPITAL, *erroneously sued as LUCILLE PACKARD*
11 CHILDREN'S HOSPITAL, and STANFORD HOSPITAL & CLINICS

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 ART GONZALES, et al.,) Case No. 5:09-CV-05539-JF

15 Plaintiffs,)
16 Judge: Hon. Jeremy Fogel
17 Courtroom: #3 (5th Floor)

18 vs.)

19 LUCILLE PACKARD CHILDREN'S) **STIPULATION AND ORDER RE**
20 HOSPITAL, et al.,) **DISMISSAL OF CAUSES OF ACTION**
21) **AGAINST LUCILLE PACKARD**
22) **CHILDREN'S HOSPITAL AND**
23 Defendants.) **STANFORD HOSPITAL & CLINICS;**
24) **DELINEATION OF PLAINTIFFS'**
25) **CAUSES OF ACTION APPLICABLE**
26) **TO EACH DEFENDANTS;**
27) **EXTENSION OF TIME TO RESPOND**
28) **TO COMPLAINT**

29 Plaintiffs, ART GONZALES and MARY GONZALES, individually and as Successors-
30 in-Interest of the ESTATE OF MARTINA GONZALES, by and through their undersigned
31 counsel, do herewith submit this Stipulation re Dismissal of Causes of Action as to Defendants,
32 LUCILLE PACKARD CHILDREN'S HOSPITAL and STANFORD HOSPITAL & CLINICS
33 only and Stipulation delineating the applicable Defendants being called to Answer each of
34 Plaintiffs' Causes of Action.

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1 WHEREAS, Defendants, LUCILLE PACKARD CHILDREN'S HOSPITAL and
2 STANFORD HOSPITAL & CLINICS, filed a Motion to Dismiss Plaintiffs' Causes of Action as
3 to the moving Defendants (FRCP 12(b)(6)), a Motion to Strike either the 8th or 10th Causes of
4 Action (FRCP 12(f)), and a Motion for a More Definitive Statement as to the entire Complaint
5 (FRCP 12(e)); and whereas Plaintiffs do not oppose such motions and have filed a Statement of
6 Non-Opposition, NOW, THEREFORE, THE PARTIES STIPULATE AS FOLLOWS:

7 1. The First, Second, and Third Causes of Action of Plaintiffs' Complaint are hereby
8 DISMISSED as to Defendants, LUCILLE PACKARD CHILDREN'S HOSPITAL and
9 STANFORD HOSPITAL & CLINICS.

10 2. The Tenth Cause of Action is duplicative and is hereby DISMISSED.

11 3. The following is a more definitive statement as to which Defendants are being
12 called to Answer Plaintiffs' various Causes of Action:

- 13 a. First Cause of Action – Strict Liability – as to Defendants Baxter
14 Healthcare Corp., Baxter International, Inc., Scientific Protein
15 Laboratories, Inc., Chanzhou SPL Company, Ltd. aka Kaipu Biochemical
16 Co., American Capital Ltd., B. Braun Medical Inc., Tyco Healthcare
17 Group, LP n/k/a Covidien, Covidien, Inc., and Medefil, Inc. and Does
18 1-50 only.
- 19 b. Second Cause of Action – Breach of Implied Warranty – as to Defendants
20 Baxter Healthcare Corp., Baxter International, Inc., Scientific Protein
21 Laboratories, Inc., Chanzhou SPL Company, Ltd. aka Kaipu Biochemical
22 Co., American Capital Ltd., B. Braun Medical Inc., Tyco Healthcare
23 Group, LP n/k/a Covidien, Covidien, Inc., and Medefil, Inc. and Does
24 1-50 only.
- 25 c. Third Cause of Action – Breach of Express Warranty - as to Defendants
26 Baxter Healthcare Corp., Baxter International, Inc., Scientific Protein
27 Laboratories, Inc., Chanzhou SPL Company, Ltd. aka Kaipu Biochemical
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1 Co., American Capital Ltd., B. Braun Medical Inc., Tyco Healthcare
2 Group, LP n/k/a Covidien, Covidien, Inc., and Medefil, Inc. and Does
3 1-50 only.

4 d. Fourth Cause of Action – Negligence – as to Defendants Baxter
5 Healthcare Corp., Baxter International, Inc., Scientific Protein
6 Laboratories, Inc., Chanzhou SPL Company, Ltd. aka Kaipu Biochemical
7 Co., American Capital Ltd., B. Braun Medical Inc., Tyco Healthcare
8 Group, LP n/k/a Covidien, Covidien, Inc., and Medefil, Inc. and Does
9 1-50 only.

10 e. Fifth Cause of Action – Fraudulent Misrepresentation – as to Defendants
11 Baxter Healthcare Corp., Baxter International, Inc., Scientific Protein
12 Laboratories, Inc., Chanzhou SPL Company, Ltd. aka Kaipu Biochemical
13 Co., American Capital Ltd., B. Braun Medical Inc., Tyco Healthcare
14 Group, LP n/k/a Covidien, Covidien, Inc., and Medefil, Inc. and Does
15 1-50 only.

16 f. Sixth Cause of Action – Fraudulent Concealment – as to Defendants
17 Baxter Healthcare Corp., Baxter International, Inc., Scientific Protein
18 Laboratories, Inc., Chanzhou SPL Company, Ltd. aka Kaipu Biochemical
19 Co., American Capital Ltd., B. Braun Medical Inc., Tyco Healthcare
20 Group, LP n/k/a Covidien, Covidien, Inc., and Medefil, Inc. and Does
21 1-50 only.

22 g. Seventh Cause of Action – Negligent Infliction of Emotional Distress – as
23 to Defendants Baxter Healthcare Corp., Baxter International, Inc.,
24 Scientific Protein Laboratories, Inc., Chanzhou SPL Company, Ltd. aka
25 Kaipu Biochemical Co., American Capital Ltd., B. Braun Medical Inc.,
26 Tyco Healthcare Group, LP n/k/a Covidien, Covidien, Inc., and Medefil,
27 Inc. and Does 1-50 only.
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- 1 h. Eighth Cause of Action – Medical Negligence – as stated in the complaint
2 as to Defendants Lucille Packard Children’s Hospital, Stanford University
3 / Stanford University Hospital and Clinics and Does 1-50 only.
4 i. Ninth Cause of Action – Negligent Infliction of Emotional Distress as
5 stated in the complaint as to Defendants Lucille Packard Children’s
6 Hospital, Stanford University / Stanford University Hospital and Clinics
7 and Does 1-50 only.
8 j. Tenth Cause of Action – duplicative of Fourth Cause of action as to non-
9 moving Defendants and as to the Eighth Cause of Action as to the moving
10 Defendants.

11 4. Plaintiffs and Defendants, LUCILLE PACKARD CHILDREN’S HOSPITAL and
12 STANFORD HOSPITAL & CLINICS jointly agree to stipulate to continue LUCILLE
13 PACKARD CHILDREN’S HOSPITAL and STANFORD HOSPITAL & CLINICS’ time to file
14 a responsive pleading in response to Plaintiffs' Complaint for Damages to February 4, 2010.

15 IT IS SO STIPULATED.

16
17 Dated: January 15, 2010 DUMMIT, BUCHHOLZ & TRAPP

18
19 By: /s/ Carolyn Katzorke
20 Carolyn Katzorke
21 Attorneys for Defendants Lucille Packard
22 Children’s Hospital and Stanford Hospital &
23 Clinics

24
25 Dated: January 15, 2010 ROBINSON, CALCAGNIE & ROBINSON

26 By: /s/ Karren Schaeffer
27 Karren Schaeffer
28 Attorneys for Plaintiffs

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: January 19, 2010

By:  _____
The Honorable Jeremy Fogel

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DECLARATION OF SERVICE

Gonzales v. Lucille Salter Packard Children's Hospital, et al.

Merced Case No. 610641

I am employed in Sacramento County; I am over the age of eighteen years and not a party to the within action; my business address is 1661 Garden Highway, Suite 100, Sacramento, California 95833-9706.

On this date, I served the foregoing documents described as ***STIPULATION AND ORDER RE DISMISSAL OF CAUSES OF ACTION AGAINST LUCILLE PACKARD CHILDREN'S HOSPITAL AND STANFORD HOSPITAL & CLINICS; DELINEATION OF PLAINTIFFS' CAUSES OF ACTION APPLICABLE TO EACH DEFENDANTS; EXTENSION OF TIME TO RESPOND TO COMPLAINT*** on the interested parties in this action as follows:

For Plaintiffs:

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and

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18 **✓ Via United States Postal Service.** By depositing for collection and mailing, following
19 ordinary business practices, a true copy thereof enclosed in a sealed envelope with postage
20 thereon fully prepaid. I am familiar with the business practices of the law offices of Dummit,
21 Buchholz & Trapp for collecting and processing mail, and know that the mail in said office is
22 collected and processed so that this piece of mail was deposited with the United States Postal
23 Service on the same date as is indicated herein below.

24 **___ Via Overnight Mail Service.** By causing a true copy thereof, enclosed in a sealed envelope,
25 to be delivered via the following overnight mail courier service: **United Parcel Service**
26 **("UPS")**. The above envelopes were placed for collection and delivery by UPS with fees
27 thereon fully prepaid or provided for in accordance with ordinary business practices.

28 **___ Via Facsimile.** By sending a true copy thereof by facsimile machine to the numbers listed
herein below, and then depositing for collection and mailing, following ordinary business
practices, a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid.

Executed on January 15, 2010, at Sacramento, California. I declare under penalty of
perjury under the laws of the State of California that the above is true and correct.

/s/ Angelina M. Lopez
Angelina M. Lopez